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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,865	02/20/2004	Greg Pellegrino	200301878-2	7590

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HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

EXAMINER

CHU, GABRIEL L

ART UNIT	PAPER NUMBER
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2114

MAIL DATE	DELIVERY MODE
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10/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/783,865	Applicant(s) PELLEGRINO ET AL.	
	Examiner Gabriel L. Chu	Art Unit 2114	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is supplemental to the previous final action and maintains the grounds of rejection established therein, as well as the finality. Those grounds are reiterated below. As the terminal disclaimer was not accepted because the attorney is supposedly not of record, the double patenting rejections must be maintained.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. **Claims 21-24, 26-33, 35-40 rejected on the ground of nonstatutory**

obviousness-type double patenting as being unpatentable over claims 1-15 of

U.S. Patent No. 6725393. Although the conflicting claims are not identical, they are not patentably distinct from each other. Claims 21-24, 26-33, 35-40 of the instant application are anticipated by claims 1-15 of U.S. Patent No. 6725393 in that claims 1-15 of U.S. Patent No. 6725393 contain all of the limitations of claims 21-24, 26-33, 35-

40 of the instant application. Claims 21-24, 26-33, 35-40 of the instant application therefore are not patently distinct from the earlier patent claims, and as such are unpatentable for obvious-type double patenting. (In re Goodman (CAFC) 29 USPQ2d 2010). While limitations of the claims of U.S. Patent No. 6725393 may be broader than the claims of the instant application, the language and the disclosure of U.S. Patent No. 6725393 indicate that the limitation of claims of the instant application are merely a subset of U.S. Patent No. 6725393. These differences are not sufficient to render the claims patentably distinct. *Georgia-Pacific Corp. v. United States Gypsum Co.*, 195 F.3d 1322, 1325, 52 USPQ2d 1590, 1593 (Fed. Cir. 1999).

4. **Claim 25, 34, 41 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6725393 in view of Official Notice.** See reasoning above. Further, although U.S. Patent No. 6725393 does not specifically disclose transmitting failure signal from the second source node to the first source node if the write request fails, indicating such a failure is very well known in the art. Examiner takes official notice for sending a failure indication. A person of ordinary skill in the art at the time of the invention could have been motivated to send such an indication because a failure has occurred, and signaling such would have been informative for any number of reasons including logging, recovery, or just notification.

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 21-24, 35-37 rejected under 35 U.S.C. 102(b) as being anticipated by US 5513314 to Kandasamy et al. See previous rejection.

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claim 25 rejected under 35 U.S.C. 103(a) as being unpatentable over US 5513314 to Kandasamy et al. as applied to claim 24 above, and further in view of Official Notice. See previous rejection.

9. Claim 26-30 rejected under 35 U.S.C. 103(a) as being unpatentable over US 5513314 to Kandasamy et al. in view of US 6751190 to Swallow. See previous rejection.

10. Claims 31-33, 38-40 rejected under 35 U.S.C. 103(a) as being unpatentable over US 6751190 to Swallow in view of US 5513314 to Kandasamy et al. See previous rejection.

11. Claim 34, 41 rejected under 35 U.S.C. 103(a) as being unpatentable over US 6751190 to Swallow and US 5513314 to Kandasamy et al. as applied to claim 31, 38 above, and further in view of Official Notice. See previous rejection.

Conclusion

12. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabriel L. Chu whose telephone number is (571) 272-3656. The examiner can normally be reached on weekdays between 8:30 AM and 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Gabriel L. Chu/
Primary Examiner
Art Unit 2114

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